



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 468

IN THE MATTER OF ROBERT COLUMBUS

DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and Robert Columbus (Mr. Columbus) pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On September 10, 1992, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Columbus. The Commission has concluded its inquiry and, on March 30, 1993, found reasonable cause to believe that Columbus violated G.L. c. 268A. On May 21, 1993, the Commission's Enforcement Division issued an Order to Show Cause, commencing adjudicatory proceedings. The Order to Show Cause alleged that Columbus violated G.L. c. 268A, §19 by issuing building permits to himself or his sons. On May 25, 1993, the Enforcement Division and Columbus informed the Commission that they proposed to resolve the matter.

The Commission and Columbus now agree to the following findings of fact and conclusions of law:

1. At all relevant times, Columbus was employed as a building inspector for the Town of Stoneham. As such, Columbus was a municipal employee as that term is defined in G.L. c. 268A, §1(g).
2. Columbus' official duties as the Stoneham Building Inspector include the issuing of building permits for construction being done in the town and ensuring all work performed pursuant to such permits complies with local building codes.
3. At all relevant times, Columbus owned property at 1 Brookbridge Road in Stoneham, his son Stephen Columbus (Stephen) owned Stoneham properties at 25 Washington Street and 76 Williams Street, and his son Robert Columbus (Robert) owned Stoneham property at 86 Pleasant Street.
4. On the following dates, and at the places indicated, Columbus, in his capacity as Stoneham Building Inspector, issued the following building permits:
 - (a) a November 6, 1987 building permit to Stephen for 25 Washington Street for a re-roof;
 - (b) a November 6, 1987 building permit to Robert for 86 Pleasant Street for a kitchen addition;
 - (c) an April 24, 1990 building permit to Stephen for 76 Williams Street for a re-roof and interior alterations; and
 - (d) an August 29, 1991 building permit to a contractor for Columbus' property at 1 Brookbridge for a re-roof.^{1/}
5. Section 19 of G.L. c. 268A, except as permitted by paragraph (b),^{2/} prohibits a municipal employee from

participating as such an employee in a particular matter in which to his knowledge he or an immediate family member has a financial interest.

6. The decisions to issue the building permits described in paragraph 4, above, were particular matters.

7. As set forth in paragraph 4, above, Columbus participated as a building inspector in those particular matters by issuing the building permits.

8. Either Columbus or one of his sons had a financial interest in each of the foregoing building permits.

9. Columbus, by issuing the building permits to himself or his sons, as set forth in paragraph 4, participated in his official capacity in particular matters in which he knew he or an immediate family member had a financial interest, thereby violating G.L. c. 268A, §19.^{3/}

10. In connection with the above-described conduct, the Commission has found no evidence of corrupt intent.^{4/}

In view of the foregoing violations of G.L. c. 268A by Columbus, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Columbus:

(1) that Columbus pay to the Commission the sum of seven hundred and fifty dollars (\$750) as a civil penalty for violating G.L. c. 268A, §19 as stated above;

(2) that Columbus will act in conformance with the requirements of G.L. c. 268A, §19 in the future; and

(3) that Columbus waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

Date: May 26, 1993

^{1/} The Order to Show Cause included a November 19, 1990 building permit to Robert for 86 Pleasant Street for a sunroom, woodburning stove and temporary kitchen. The Commission has decided not to pursue this matter based on evidence that Columbus was out of state when the permit issued and that his secretary typed his name in the signature space in his absence.

^{2/} None of those exemptions apply here.

^{3/} Columbus was also involved in a significant controversy in the spring of 1992, concerning a certificate of occupancy for property owned by Stephen at 76 Williams Street. On January 2, 1992, Columbus obtained a §19(b)(1) exemption from the town administrator to participate as building inspector in an addition Stephen was constructing at the above property. (Section §19(b)(1) provides that it shall not be a violation of §19 "if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.") Subsequently, questions arose concerning the size of the addition and whether the structure violated zoning regulations. On February 24, 1992, the town administrator wrote a memorandum to Columbus stating, "Any future requests for building permits involving your immediate family (spouse, child, mother, father, sisters and brothers) will be referred to this office because you are the only Building Inspector for the Town of Stoneham. I have previously felt that having only one Building Inspector would necessitate your issuance of permits for everyone including family members. Upon reflection and advice, I will appoint an Acting Building Inspector to issue future building permits to resolve any question for the potential of either a conflict of interest or the applicability of a concept of 'necessity' resulting from one Building Inspector." On March 7, 1992, a local inspector appointed by the town administrator denied Stephen's application for a certificate of occupancy and issued a cease and desist order. According to Columbus, on April 7, 1992, Columbus, relying on advice he received from private legal counsel indicating he could do so, signed a certificate of occupancy for 76 Williams Street but did not physically deliver the certificate to Stephen. The town administrator suspended Columbus for planning to issue the certificate of occupancy in violation of his directive. On April 14, 1992, Columbus signed a letter to the town administrator stating, "I am revoking the Occupancy Permit in recognition of the fact that its issuance was inappropriate given your legitimate contrary instructions as Town Administrator not to be involved in this matter involving my son and not on the specific merits as to whether a Certificate of Occupancy should be issued." Columbus contends that he signed the letter in order to get his job back and without the benefit of counsel.

Although the Order to Show Cause included the above matter, the Commission has agreed to the proposal of the Enforcement Division and Columbus not to pursue the matter further because Columbus showed sensitivity to the conflict issue by originally seeking and obtaining a §19(b)(1) exemption from his appointing authority, and because the town administrator and Columbus immediately took action to remedy the situation. The Commission also notes that Columbus acted in reliance on private legal advice (albeit incorrect), although we point out, as we have done in the past, that if a public employee involved in a potentially serious conflict of interest situation seeks to rely on a legal opinion as a shield against action by this Commission, the opinion must be from town counsel, in writing and made a matter of public record, and forwarded to the Commission for review pursuant to 930 CMR 1.03(3). *In re Lavoie*, 1987 SEC 286, 287.

^{4/} Corrupt intent is not an element of a §19 violation.